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February 21, 2003

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in the
Antidumping Investigation of Urea Ammonium Nitrate Solutions from
the Russian Federation

Summary

We have analyzed the comments and rebuttal comments of interested parties in the antidumping investigation of urea ammonium nitrate solutions (UANS) from the Russian Federation (Russia). As a result of our analysis of these comments, we have made changes in the margin calculations. We recommend that you approve the positions we have developed below in the "Discussion of the Issues" section of this memorandum for this final determination.

Background

On October 3, 2002, the Department of Commerce (the Department) published the preliminary determination of sales at less-than-fair-value (LTFV) in the antidumping investigation of UANS from Russia. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from the Russian Federation, 67 FR 62008 (October 3, 2002) (preliminary determination). The period of investigation (POI) is October 1, 2001, through March 31, 2002. Since the preliminary determination, the following events have occurred:

During October 2002, the Department conducted a verification of JSC Nevinnomysskij Azot's (Nevinka) sales and factors of production (FOP) information.

On November 1, 2002, the petitioner¹ filed a request for a public hearing in this investigation. However, a public hearing was not held because the petitioner withdrew its request on January 16, 2003.

On November 7, 2002, the Department published a postponement of the final determination of sales at LTFV in the antidumping investigation of UANS from Russia. See Postponement of the Final Determinations in the Less-Than-Fair-Value Investigations of Urea Ammonium Nitrate Solutions From Belarus, the Russian Federation, and Ukraine, 67 FR 67823 (November 7, 2002).

The petitioner, Nevinka, and J.R. Simplot, a U.S. distributor of Russian UANS, filed surrogate value information on November 26, 2002.

On December 11, 2002, the Department placed the report of its verification of Nevinka's sales and FOP information on the record of this investigation. See Memorandum from Paige Rivas to the File, "Verification of Sales and Factors of Production Information Reported by Nevinnomysskij Azot," dated December 11, 2002 (Verification Report).

Parties filed case and rebuttal briefs on January 7 and January 14, 2003, respectively.

Below is the complete list of issues in this investigation for which we received comments and rebuttal comments from parties:

- Comment 1: Whether the Department Should Continue to Value Natural Gas Using the Price from Gas Producers to the Egyptian Government
- Comment 2: Whether the Department Should Continue to Deny Billing Adjustments
- Comment 3: Whether the Department Should Consider Observation 16 to be Within the POI
- Comment 4: Whether the Department Should Reflect in its Final Determination that Nevinka did not pay Foreign Inland Freight Charges for Observations 7 through 9
- Comment 5: Whether the Department Should Continue to Treat Catalysts, Water, and Water-based Inputs as Overhead Items
- Comment 6: Whether the Department Should Calculate its Surrogate Financial Ratios Based Upon One Egyptian Producer

Discussion of the Issues

Comment 1: Whether the Department Should Continue to Value Natural Gas Using the Price from Gas Producers to the Egyptian Government

¹ The petitioner in this investigation is the Nitrogen Solutions Fair Trade Committee. Its members consist of CF Industries, Inc.; Mississippi Chemical Corporation; and Terra Industries, Inc.

Nevinka faults the Department's preliminary decision to value its natural gas input based upon information contained in a report submitted by the petitioner. Instead, Nevinka asserts, the Department should have relied upon information contained in its August 8, 2002, submission, which included a government decree that established the value of natural gas for industrial production in Egypt as 14.1 Piasters/m³. See Nevinka's Case Brief at 2. Nevinka obtained this figure from Rising Star Energy Publications (RSEP), which it claims is publicly available. Id. Nevinka asserts that the natural gas surrogate value proffered by the petitioner, and relied upon by the Department, provided a distorted view of natural gas values in Egypt during the POI. In particular, Nevinka notes that, in the preliminary determination, the Department stated that it valued Nevinka's natural gas at the price the Egyptian government paid to gas producers. Id. at 3. Nevinka claims that, although the Egyptian government paid a negotiated price to private gas producers for a portion of the natural gas it acquired during the POI, it obtained the majority of its natural gas at no cost. Nevinka asserts that the Egyptian government obtained natural gas at no cost either through production sharing agreements (PSAs) or government-owned natural gas fields. Id. Consequently, Nevinka argues that, when valuing the natural gas used by the Egyptian government, the Department should consider the price of gas from all sources, and not just the price paid for the portion obtained from private producers. Therefore, for the final determination, Nevinka argues that the Department should value natural gas at 14.1 Piasters/m³.

The petitioner disagrees with Nevinka. The petitioner states that the Department's statute provides that the Department will determine normal value by using the best information available from an appropriate market economy country to value the FOPs utilized in producing the subject merchandise. See section 773(c)(1) of the Tariff Act of 1930, as amended (the Act). The petitioner contends the Department did this in the preliminary determination by valuing Nevinka's natural gas based on prices between the Egyptian government and private producers. The petitioner argues that the prices utilized by the Department in the preliminary determination, "accurately reflect the true market value" of Egyptian natural gas and are in accordance with the Department's practice of using prices that reflect the involvement of more than one party in the marketplace. See Petitioner's Rebuttal Brief at 6; see also, Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China, 66 FR 31204 (June 11, 2001) and accompanying Decision Memorandum at Comment 6. In particular, the petitioner asserts that the report it submitted to the Department is representative of the market-driven prices paid to producers of natural gas in Egypt. Further, the petitioner asserts that the price formula referenced in the report it submitted to the Department is widely used in Egypt and is contemporaneous with the POI. See Petitioner's Rebuttal Brief at 7. The petitioner faults the surrogate natural gas value proffered by Nevinka as being a static price that is fixed by the government (rather than driven by a multi-party market system) and isolated from the effects of supply and demand that have caused natural gas prices to fluctuate over time, including during the POI. The petitioner stresses that the surrogate values proffered by Nevinka are not reflective of what Nevinka would have paid if prices were determined by market forces. See Union Camp Corp. v. United States, 8 F. Supp. 2d 842, 846 (CIT 1998). In addition, the petitioner asserts that the surrogate value proffered by Nevinka may be a "subsidized price," and that Congress has instructed the Department to avoid using subsidized prices. See

Petitioner's Rebuttal Brief at 5. Further, the petitioner asserts that the surrogate value proffered by Nevinka is below commercially-determined Egyptian prices and that it is even below the cost to the Egyptian government calculated by Nevinka.

Further, the petitioner takes exception to Nevinka's argument that the surrogate natural gas value used in the preliminary determination is flawed because it does not reflect the portion of gas acquired by the Egyptian government at no cost. The petitioner asserts that the cost to the Egyptian government is not at issue; rather, the issue is whether the chosen surrogate value represents a market-driven price. In addition, the petitioner asserts that Nevinka's characterization of the gas that the Egyptian government received through PSAs or from production on government properties as "free" is erroneous. In particular, the petitioner finds fault with Nevinka's reliance upon the study by the RSEP to calculate the cost to the Egyptian government for the portion of natural gas it obtained from private producers. The petitioner asserts that the RSEP study is not supported by publicly available information. As a result, the petitioner claims the Department is unable to review the study for accuracy. In addition, the petitioner claims that the RSEP report, based on the RSEP study, does not provide data to support the various production sharing percentages that the RSEP study uses to calculate the average purchase price of gas. See Petitioner's Rebuttal Brief at 10. Moreover, the petitioner asserts that the RSEP report itself indicates that the gas the Egyptian government receives through the PSAs constitutes a payment for the extraction rights to natural gas. Therefore, the petitioner argues that, even if the cost of gas to the Egyptian government were relevant, Nevinka's characterization of the gas obtained through PSAs or from production by the Egyptian government as "free" is erroneous because costs are incurred to produce the gas obtained from the fields owned by the Egyptian government.

Department's Position:

We disagree with Nevinka's assertion that the Department should value natural gas using the surrogate value it provided. It is well-established that, in valuing FOPs in a non-market economy case, the Department's task is "to calculate what a producer's costs or prices would be if such prices or costs were determined by market forces." See Yantai Oriental Juice Co. v. United States, No. 00-07-00309, Slip Op. 02-56, at 7 n.5 (CIT 2002), and cases cited therein. In this case, for example, the Department is charged with determining a market cost of natural gas, not the actual cost paid by Egyptian public or private purchasers under other conditions. Nevinka itself acknowledges that the price it proposes the Department use is a price "set by government decree." See Nevinka Case Brief at 2, n.1. Such a price is not a price determined by market forces. Because the price the Egyptian government sets by decree for industrial users is not a market price, it is also unnecessary to address the petitioner's speculation that the decree price may be subsidized.

For the same reason, we have rejected Nevinka's suggestion that we calculate a surrogate value by taking into account the cost to the Egyptian government for gas that it does not acquire in market transactions. Thus, all arguments related to how such values might best be calculated are irrelevant. Therefore, in the final determination, we have continued to assign the same surrogate value to natural

gas as that used in the preliminary determination.

Comment 2: Whether the Department Should Continue to Deny Billing Adjustments

The petitioner contends that the Department properly denied Nevinka an adjustment for its claimed billing adjustments in the preliminary determination. In making this decision, the petitioner states, the Department took note of its regulation which provides that “... the party in possession of relevant information bears the burden of establishing its entitlement to a favorable adjustment.” See 19 CFR 351.401(b). Because Nevinka failed to meet this burden, the petitioner argues that the Department’s actions in the preliminary determination were correct. Specifically, the petitioner asserts that, prior to verification, Nevinka was given multiple opportunities by the Department to explain and substantiate its claimed adjustments. However, the petitioner contends that, in response to these opportunities, Nevinka failed to provide either a clear explanation or sufficient support for its claimed adjustments. Moreover, the petitioner contends that, at verification, Nevinka offered an explanation for its claimed adjustments which referenced information not on the record of this investigation. The petitioner argues that Nevinka’s explanation was an attempt to use verification as an opportunity to supply the Department with information the Department had previously requested but not received, *i.e.*, new information. The petitioner argues that this attempt by Nevinka runs counter to the Department’s policy of closing the administrative record prior to verification, in order to enable the Department to “make calculations based on that fixed and certain body of information,” as well as to afford the petitioner an opportunity to comment on the information used as the basis of the Department’s final determination. See Petitioner’s Case Brief at 6; see also Reiner Brach GmbH & Co v. United States, 206 F. Supp. 2d 1323, 1334 (CIT 2002) (quoting Coalition for the Pres. of Am. Brake Drum and Rotor Aftermarket Mfrs. v. United States, 44 F. Supp. 2d 229, 237, 239 (CIT 1999)). The petitioner argues that the “new” information presented at verification can neither be viewed as a minor correction, nor as information that “corroborates, supports or clarifies information already on the record.” The petitioner contends that, in Silicomanganese from the PRC, the Department rejected information reported for the first time at verification because it did not provide the petitioner with the opportunity to comment on the information, nor did it afford the Department “the opportunity to analyze the information prior to verification.” See Final Results of Antidumping Duty Administrative Review: Silicomanganese from the People’s Republic of China, 65 FR 31514 (May 18, 2000) (Silicomanganese from the PRC) and accompanying Decision Memorandum at Comment IV(3). The petitioner argues that the Department should reject the information provided at verification regarding Nevinka’s billing adjustments for similar reasons.

Nevinka argues that the Department should include all billing adjustments verified by the Department in the final determination. Nevinka states that, prior to verification, in its questionnaire and supplemental questionnaire responses, it provided the Department with support and an explanation for its claimed billing adjustments. See Nevinka’s Rebuttal Brief at 2-3. In addition, Nevinka claims that the Department verified the issues raised in the petitioner’s pre-verification comments regarding its claimed adjustments. Nevinka contends that, in addition to other information previously on the record of this

investigation, the Department's verification exhibits include a thorough compilation of sales documents pertaining to the petitioner's pre-verification comments. Further, Nevinka notes that the Department's verification report states that "no discrepancies" were found with respect to its claimed adjustments. Therefore, Nevinka argues that the Department should take its claimed billing adjustments into account in making the final determination.

Department's Position:

We disagree with the petitioner that the Department should reject Nevinka's claimed billing adjustments. We note that the facts in this investigation are different from those in Silicomanganese from the PRC, where the Department rejected production and sales data reported for the first time at verification. In this case, Nevinka claimed the billing adjustments prior to verification. It reported the billing adjustments in its sales database and included a narrative description of the billing adjustments in its June 12, 2002, Section A questionnaire response and its July 1, 2002 Section C questionnaire response. While it may have been preferable for Nevinka to have provided the Department with the billing adjustment documentation it provided at verification prior to verification, we do not believe that the record shows Nevinka withheld requested information. The petitioner contends that, in its supplemental section A questionnaire response, Nevinka claimed that it had provided all documents to support its claimed billing adjustments. However, petitioner argues that, in its response, Nevinka failed to include the documentation that it provided at verification. We disagree with the petitioner on this matter. In the Department's supplemental questionnaire, we requested that Nevinka "... verify that the sales documents in Exhibit 5 comprise the complete universe of documents involved in the sales of UANS by Nevinka. Please provide the long-term contract, price adjustment documentation, and shipping and export documentation associated with this sale" (emphasis added). See Nevinka's July 16, 2002, supplemental section A response at A-21. In response, Nevinka stated that, with the sales contract, the universe of documents was complete. Id. We note that Nevinka supplied the requested information, including an invoice that reflected the post-sale billing adjustments for the sale for which it was requested. While other sales of UANS involved a different basis for the claimed adjustments, the sale for which Nevinka provided an overview did not.

In addition, we disagree with the petitioner's interpretation of what occurred at verification. As noted above, Nevinka reported the basis of the particular type of claimed adjustment for the one sale for which we requested such information. Moreover, in the cover letter of the October 7, 2002, verification agenda sent to Nevinka, the Department states that "... verification is not intended to be an opportunity for submission of new factual information. New information will be accepted at verification only when: (1) the need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record." Because the information presented at verification corroborated what Nevinka had previously submitted in its questionnaire responses, we have considered the information for purposes of the final determination and have accepted Nevinka's claimed billing adjustments.

Comment 3: Whether the Department Should Consider Observation 16 to be Within the POI

Nevinka notes that, in the preliminary determination, the Department excluded Nevinka's observation 16 sale from its margin calculation because it considered this U.S. sale to have been made outside of the POI. However, Nevinka argues that, during its sales verification, the Department verified the "accuracy of the basic sales and payment data reported in {Nevinka's} sales listing." See Verification Report, at 8. Nevinka notes that the Department normally uses a respondent's invoice date as the date of sale, unless evidence is presented to establish another date as a better reflection of when the material terms of sale are set. See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32835 (June 16, 1998).

Therefore, given the Department's verification of the sale date associated with observation 16, Nevinka argues that the date of sale reported by Nevinka should be used in the final determination as the date on which the material terms of sale were established. Because the invoice date for observation 16 falls within the POI, Nevinka argues that this sale should be considered within the POI for the final determination.

The petitioner disagrees with Nevinka. The petitioner argues that Nevinka is mistakenly relying upon a statement made in the verification report as support for its argument that the disputed sale should be considered to have been made during the POI. Although the verification report states that "a sales process had been reestablished and price protocols were set before the bill of lading (*i.e.*, shipment) date," the petitioner argues that the corresponding verification exhibits run counter to this statement. The petitioner claims that the exhibits demonstrate that the contract governing observation 16 establishes that price adjustments were made after shipment. Under these circumstances, the petitioner argues, the Department's practice is to treat the shipment date as the date of sale and the shipment date for observation 16 is outside of the POI. Accordingly, the petitioner argues that Nevinka has provided no evidence to indicate that sales observation 16 should be included in the margin calculation for purposes of the final determination.

Department's Position:

We agree with the petitioner and, as in the Preliminary Determination, have used shipment date as the date of sale for observation 16, and thus to exclude it from the margin calculations.

Nevinka originally reported its "date of sale" in Field 7.0 (SALEDATU) (sales dates "different from the sale invoice date"). The narrative explanation indicated that, for observation 16, Nevinka used "the date on which the essential terms of sale were mutually agreed by the parties." See Nevinka's Section C and D questionnaire response of July 1, 2002, at C-7. This date corresponds to the date of signature for the provisional price protocol for that observation, and falls within the POI.

However, we disagree with Nevinka that, for purposes of this case, the date of signature of the provisional price protocol should be considered the date on which the material terms of the sale were

established and, consequentially, as the “date of sale” for purposes of this investigation. The very term “provisional protocol” demonstrates that there is an expectation that the sales prices contained in these documents will be adjusted, sometimes multiple times, after the documents are signed. In determining the proper “date of sale” in a case, the Department seeks to determine “whether changes are sufficiently common to allow [it] to conclude that initial agreements should not be considered to finally establish the material terms of sale.” See, e.g., Allied Tube & Conduit Corp. v. United States, 127 F. Supp. 2d 207, 220 (CIT 2000). Because Nevinka established that it has a clear practice of permitting material changes to sales terms (such as price) after the date of the price protocol, the Department has not used this document to identify the date of sale for the purposes of this case.

The invoice date is also not an appropriate choice for date of sale here, because the invoice date is after shipment. (The invoice date for observation 16 is, furthermore, outside the POI, and thus does not support Nevinka’s argument for the inclusion of observation 16 in the calculations for the investigation.) It is the Department’s longstanding practice not to use, as date of sale, a date later than shipment date. Instead, shipment date is used as a proxy for any such subsequent date. See, e.g., Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany: Final Results of Antidumping Duty Administrative Review, 63 FR 13217, 13226 (March 18, 1998).

Therefore, the Department has used the shipment date as the date of sale for observation 16. Because the shipment date for observation 16 falls outside the POI, the Department has excluded observation 16 from its margin calculation in the final determination.

Comment 4: Whether the Department Should Reflect in its Final Determination that Nevinka Did Not Pay Foreign Inland Freight Charges for Observations 7 through 9.

Nevinka argues that, because it did not incur foreign inland freight charges for U.S. sale observations 7 through 9, the Department should not deduct these expenses from its export price for these sales in the final determination. Nevinka states that the Department verified that Nevinka was not responsible for the home market freight expenses on these sales.

The petitioner claims that, after reviewing the verification documents related to U.S. sale observations 7 through 9, it discovered that the terms of the sales in the verification exhibit did not match those reported by Nevinka in its U.S. sales listing for observation 9. Due to this inconsistency, the petitioner argues that the Department should continue to deduct foreign inland freight expenses from Nevinka’s export price for these sales in the final determination.

Department’s Position:

We agree with Nevinka. In non-market economy cases, as in other cases, the Department’s practice is to make deductions from the export price for foreign inland freight when such freight is included in the export price. See Certain Cased Pencils from the People’s Republic of China; Preliminary Results and

Recision in Part of Antidumping Duty Administrative Review, 68 FR 1591, 1594 (January 13, 2003). In non-market economy cases, foreign (i.e., home market) inland freight is provided by a non-market economy vendor, and the Department bases the deductions for these movement expenses on surrogate values. Id. However, as noted by Nevinka, the Department verified that Nevinka did not incur foreign inland freight charges for sale observations 7 through 9, as a result of an arrangement between Nevinka and the buyer. See Verification Report at 9. In addition, the discrepancy noted by the petitioner is a result of a change in the sales process that occurred during the POI. For sale observation 9, we verified that the sale was negotiated under the original sales arrangement in effect during the first half of the POI. We note that the first page of the Exhibit 10 indicates that the sales terms match the sales terms reported in the sales database. At a later date, this sale was incorporated into the new sales arrangement, which included a change in the party responsible for freight costs. Despite this change, it was agreed between Nevinka and the buyer that the freight cost arrangement would reflect the original sales arrangement for a certain number of sales. The document on page 6 of Exhibit 10 was issued after the sale took place, in order to clarify other aspects of the sales arrangement, not delivery terms. Given these facts, we find that the discrepancy noted by the petitioner does not warrant ignoring the Department's findings at verification. Therefore, because the Department verified that Nevinka was not responsible for the home market freight expenses on these sales, we have not deducted foreign inland freight for sale observations 7 through 9 from Nevinka's export price.

Comment 5: Whether the Department Should Continue to Treat Catalysts, Water, and Water-based Inputs as Overhead Items

The petitioner argues that, in the preliminary determination, the Department erred by treating catalysts, water and water-based inputs as overhead items. Instead, the petitioner contends, the Department should have calculated separate surrogate values for each of these inputs. To do otherwise, the petitioner argues, is inconsistent with the Department's past practice. See Solid Agricultural Grade Ammonium Nitrate from Ukraine: Final Determination of Sales at Less Than Fair Value, 66 FR 38632 (July 25, 2001) and accompanying Corrected Final Determination Decision Memorandum (July 19, 2001) at Comment 3 (Ammonium Nitrate from Ukraine). Specifically, the petitioner asserts that each input should receive a separate surrogate value because each is a critical component in the manufacture of the subject merchandise. The petitioner notes that the Department has indicated that Nevinka reported that catalysts are depreciated and that their values are insignificant. See Petitioner's Case Brief at 8. However, the petitioner asserts that by treating these inputs as overhead in the preliminary determination, the Department failed to account for these inputs in the estimation of Nevinka's cost of producing the subject merchandise.

Citing section 773(c)(3) of the Act, the petitioner states that the Department calculates its overhead ratio based upon surrogate producer financial statements, and applies this ratio to the combined value of the material, energy, variable overhead and labor inputs reported by respondents. See Petitioner's Brief at 8-9. In addition, the petitioner states that the Department's practice is to consider whether a material is included in the factory overhead of a surrogate producer's financial statements, before it

decides whether to value the material as a separate “input” or as a component of overhead. See Silicomanganese from the PRC, 65 FR 31514 and accompanying Decision Memorandum at Comment IV(I). If, after reviewing a surrogate producer’s financial statements (and/or other relevant evidence), the Department determines that the material is included in the surrogate producer’s overhead, the petitioner states, the Department’s practice is not to value the material separately. See Final Determination of Sales at Less Than Fair Value: Preserved Mushrooms from the People’s Republic of China, 63 FR 72255, 72266 (December 31, 1998). However, if the Department has reason to believe that the material is not included in the surrogate producer’s overhead, the petitioner argues, the Department’s practice is to assign the material a separate surrogate value. Id.

Further, the petitioner contends, in determining how to value an input, the Department’s practice is to also consider whether the material is a direct input or if it is required for a certain segment of the production process. See Glycine from the People’s Republic of China; Final Results of New Shipper Administrative Review, 66 FR 8383 (January 31, 2001) and accompanying Decision Memorandum at Comment 3. In making this determination, the petitioner argues, the Department examines how the respondent itself treats the material in question, and also draws conclusions from its own observations. Id. The petitioner asserts that, in Ammonium Nitrate from Ukraine, ARG from the PRC² and Fresh Garlic from the PRC³, the Department, after drawing conclusions from its own observations, decided that certain inputs were not included in overhead on the surrogate producers’ financial statements and assigned the inputs separate surrogate values. The petitioner argues that, by undergoing such an analysis, the Department is able to accurately calculate normal value by ensuring that all costs of manufacturing the subject merchandise are included in its calculations. However, in order to make this analysis, the petitioner contends, the Department must ensure that there is adequate information in the surrogate producers’ financial statements to confirm that costs will be captured in normal value if the Department does not value materials separately. See Silicomanganese from the PRC, 65 FR 31514 and accompanying Decision Memorandum at Comment IV(1).

Catalysts

The petitioner argues that catalysts should receive separate surrogate values because, it claims, they are not included in overhead on the surrogate producers’ financial statements. See Petitioner’s Case Brief at 12-14. Moreover, the petitioner argues, catalysts deserve a separate surrogate value because they are significant and essential to the manufacture of the subject merchandise. Id.; see also Final

²See Final Determination of Sales at Less Than Fair Value: Automotive Replacement Glass Windshields from the People’s Republic of China, 67 FR 6482 (February 12, 2002) (ARG from the PRC) and accompanying Decision Memorandum at Comment 25.

³See Final Determination of New Shipper Review: Fresh Garlic from the People’s Republic of China, 67 FR 72139 (December 4, 2002) (Fresh Garlic from the PRC), and accompanying Decision Memorandum of New Shipper Review at Comment 7.

Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026, 19040 (April 30, 1996) (Bicycles from the PRC). Citing Silicomanganese from the PRC, the petitioner argues that recent precedent demonstrates that whether catalysts are physically incorporated into the product is not dispositive. See 65 FR 31514 and accompanying Decision Memorandum at Comment IV(I). In that case, the petitioner contends, the Department valued a material as a separate input, even though it found the material was “not physically incorporated within silicomanganese.” *Id.* The petitioner argues that the Department valued the material as a separate input because the record lacked evidence to support the inclusion of the material in overhead and because the Department decided that a separate value would result “... in the most accurate calculation of normal value.” *Id.* Accordingly, the petitioner argues that, as it did in Silicomanganese from the PRC, the Department should value Nevinka's catalysts separately because this would result in “the most accurate calculation of normal value.” In this UANS case, the petitioner asserts, there is no record evidence to suggest that catalysts are included in the surrogate producers' overhead. See Petitioner's Case Brief at 15.

Moreover, the petitioner argues, the Department should value catalysts as direct materials in the final determination. The petitioner argues that this valuation would be consistent with the Department's treatment of catalysts as direct materials in Ammonium Nitrate from Russia. See Final Determination of Sales at Less than Fair Value: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation, 65 FR 42669 (July 11, 2000) (Ammonium Nitrate from Russia). The petitioner states that, after fully examining the role of catalysts in Ammonium Nitrate from Russia, the Department decided to treat the items as direct materials. *Id.* The petitioner notes that Nevinka was a respondent in Ammonium Nitrate from Russia and did not object to the Department's treatment of catalysts in that case. The petitioner states that the catalysts, the process and the producer (Nevinka) are the same in Ammonium Nitrate from Russia as in this investigation. Therefore, because Nevinka did not challenge the Department's treatment of catalysts as direct materials in Ammonium Nitrate from Russia, and because the process used is identical in this case, the petitioner argues that the Department should follow its past practice and value Nevinka's catalysts as direct materials for the final determination.⁴

Further, the petitioner notes that, in the preliminary determination, the Department stated that its “... practice is to consider inputs as part of overhead only when they are small in value relative to the total cost of manufacturing.” The petitioner finds fault with this statement, as well as with the Department's reliance upon Saccharin from the PRC to support its proposition that all inputs that are “small in value relative to the total cost of manufacturing” are treated as overhead. See Classification of Catalysts Memorandum (September 26, 2002 at 1, citing Final Determination of Sales at Less Than Fair Value:

⁴The petitioner contends that, in Ammonium Nitrate from Ukraine and Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium from the People's Republic of China, 67 FR 71137 (November 29, 2002) (Ferrovandium from the PRC), and accompanying Decision Memorandum at Comment 2, the Department relied on its decision in Ammonium Nitrate from Russia to classify catalysts as direct materials.

Saccharin from the People's Republic of China, 59 FR 58818, 58824 (November 14, 1994)) (Saccharin from the PRC). In Saccharin from the PRC, the petitioner states, the inputs at issue were “infrequently” used “trace chemicals” that were “... small in value relative to the total cost of manufacturing the product and, hence, {were} included in overhead.” See Petitioner’s Case Brief at 19. Citing, Lock Washers from the PRC and ARG from the PRC, the petitioner argues that the Department’s practice is to value an input as a “direct material” if it is required for a particular segment of the production process, or if the input “appears to be a significant input into the manufacturing process, rather than miscellaneous or occasionally used.” See Certain Helical Spring Lock Washers from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 61794, 61800 (November 19, 1997) (Lock Washers from the PRC); see also ARG from the PRC and accompanying Decision Memorandum at Comment 25. The petitioner asserts that the inputs at issue in this UANS investigation are wholly different from the “infrequently” used inputs at issue in Saccharin from the PRC. Accordingly, the petitioner argues that, given the significance of catalysts in the production process of the subject merchandise, their “small value relative to the total cost of manufacturing” is irrelevant. Moreover, the petitioner characterizes the Department’s treatment of “small” cost elements as unsound as a matter of policy. The petitioner states that simply including “small” input items in overhead, without doing a further analysis of their significance to the production process, suggests that a large portion of a respondent’s cost may go unaccounted for in the Department’s calculation of normal value.

Water and Water-Based Inputs

The petitioner argues that the Department should value water and water-based inputs as material inputs for the final determination. The petitioner notes that there is no evidence that water and water-based inputs are included as a part of overhead or depreciation on the surrogate producers’ financial statements. See Petitioner’s Case Brief at 12. Moreover, the petitioner finds fault with the Department’s reliance upon Potassium Permanganate from the PRC to support its decision to classify water as overhead in the preliminary determination. See Petitioner’s Case Brief at 21; see also Potassium Permanganate From the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 66 FR 46775 (September 7, 2001) and accompanying Decision Memorandum at Comment 21 (Potassium Permanganate from the PRC). The petitioner argues that, in that case, the Department did not assign water a separate value because the respondent obtained the water at no cost. The petitioner asserts that the same is not true in this UANS investigation and that the Department, in Potassium Permanganate from the PRC, never indicated that water was not valued because it was an overhead item. Further, the petitioner asserts, the Department’s decision in Potassium Permanganate from the PRC was superseded by the Department’s decision in Freshwater Crawfish Tail Meat from the PRC, where the Department stated that “whether respondents purchased or collected water, the Department still utilizes the quantities of raw materials employed in its calculation of constructed value.” See Final Determination of New Shipper Review: Freshwater Crawfish Tail Meat from the People’s Republic of China, 66 FR 20634 (April 24, 2001) and accompanying Decision Memorandum at Comment 7. Moreover, in Ammonium Nitrate from Ukraine, the petitioner contends,

the Department treated water and water-based inputs as direct materials and assigned each a separate value.⁵ See 66 FR 38632 and accompanying Decision Memorandum at Comment 2.

The petitioner also points to evidence presented in the petition to argue that the manufacture of the subject merchandise is heavily dependent upon water and water-based inputs (steam and steam condensate). The petitioner states that, in Nevinka's section D questionnaire response, Nevinka itself identifies water and water-based inputs as important energy sources in the production process. The petitioner argues that, because water and water-based inputs are significant inputs in the production process, they should not be included in overhead. Accordingly, the petitioner urges the Department to assign separate surrogate values to water and water-based inputs and to include these costs as material inputs in calculating Nevinka's normal value for the final determination.

Nevinka disagrees with the petitioner and argues that the Department should treat catalysts and water-based inputs (i.e., steam and steam condensate) as overhead expenses for the final determination. Nevinka claims that the Department's policy is to value materials separately only if they are incorporated and consumed in the production process. See Nevinka's Rebuttal Brief at 5-6; see also Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China, 62 FR 9160, 9169 (February 28, 1997)(Brake Rotors from the PRC); and Bicycles from the PRC, 61 FR at 19040. If the materials are not consumed by the production process, Nevinka claims, the Department's policy is to treat the materials as included in overhead expenses. Id. Nevinka argues that, contrary to the petitioner's argument, even if catalysts and water-based inputs are significant materials in the production process, they are not considered separate inputs unless they are incorporated into the product, and thus, should be considered as a part of factory overhead.

In this case, Nevinka argues that catalysts, water and water-based inputs should be included in overhead because they are indirect materials that are not physically incorporated into the finished product. In addition, Nevinka argues that catalysts and steam condensate (a water-based product) are neither components nor constituents of the subject merchandise. Nevinka argues that, although many indirect materials are essential to the production of the finished product, they are still not considered direct materials. Nevinka states that the Department verified that Nevinka depreciates its catalysts and that the rate of depreciation is based upon the standard useful life of each of the catalysts, which is then multiplied by the total quantity of nitric acid or ammonium nitrate produced in order to obtain the total quantity of catalysts used. See Nevinka's Rebuttal Brief at 8. Therefore, Nevinka asserts that it cannot

⁵The petitioner cites ARG from the PRC and Fresh Garlic from the PRC as other examples of the Department's assigning separate values to water as a direct material. See ARG from the PRC, 67 FR 6482 and accompanying Decision Memorandum at Comment 25; see also Fresh Garlic from the PRC, 67 FR 72139, and accompanying Decision Memorandum of New Shipper Review at Comment 7.

be said that it accounts for catalysts as direct inputs. Nevinka argues that its treatment of the catalysts' depreciation indicates that the catalysts should be included in overhead.

Further, Nevinka claims that the Department verified its treatment of steam condensate as an overhead expense. Nevinka states that it produces a portion of the steam it requires and purchases the remaining portion. Nevinka states that it returns a portion of the purchased steam condensate that it does not use to its supplier and receives a refund for this portion on a monthly basis. Nevinka states that, as verified by the Department, it accounts for the steam that it does not return as an overhead expense because it pertains to the overall functioning of the plant and not just to the production of a particular product. In the alternative, Nevinka argues that, if the Department decides to value steam condensate as a direct material input in the final determination, the Department should only value the portion of steam condensate for which Nevinka actually paid.

Nevinka also takes exception to the petitioner's argument that there is no record evidence to confirm what materials are included in the factory overhead of the surrogate Egyptian producers. Nevinka contends that, on the contrary, the Department verified record evidence which demonstrates that Nevinka treats catalysts and steam condensate as overhead items. Further, Nevinka argues that not treating catalysts, water and water-based inputs as overhead will lead to bad policy and a violation of the law. Nevinka states that it will "... give an unfair advantage to the domestic industry each time Commerce is forced to deal with less than perfect evidentiary data. Indeed, such a requirement would run against the gist of the whole body of the antidumping duty law because its implementation could paralyze nearly all of Commerce's regulatory and investigatory activity." See Peer Bearing Company v. United States, 182 F. Supp. 2d 1285, 1310 (CIT 2001). In addition, Nevinka argues that the Department is under no statutory obligation to value every factor used by the non-market economy producer. See Magnesium Corporation of America v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999) (Magnesium Corp.). Therefore, Nevinka argues that valuing these items separately would overstate normal value and constitute double-counting: once as a direct material and once as a part of overhead. Accordingly, Nevinka argues that catalysts and water-based products are indirect materials that should be treated as overhead for purposes of the final determination.

Department's Position:

We agree with both parties, in part. We address catalysts, water and water-based inputs separately below.

Catalysts

We disagree with the petitioner and continue to believe that catalysts should be treated as part of overhead. In deciding how to treat any input for the purpose of calculating normal value, the Department takes into consideration the relative cost of the input, its contribution to the production process and finished product, the frequency of its use, and the way the cost of the input is typically

treated in the industry. In this case, the catalysts and other auxiliary inputs at issue are used to precipitate chemical reactions during the production process, and they are repeatedly and continuously reused, sometimes for periods as long as eight years. See Nevinka's August 19, 2002 supplemental section D response at D-27. As we stated in the Memorandum from Paige Rivas, Team Leader to The File, "Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from Belarus and the Russian Federation: Classification of Catalysts as Overhead Expense," dated September 26, 2002 (Catalysts Memo), these inputs are responsible for a very low percentage of the total cost of manufacturing UANS. Moreover, Nevinka treats them as depreciable inputs and accounts for them as part of factory overhead. Id.

The petitioner is correct that the surrogate producer's financial statements in this case contain no evidence that any given FOP is included in its overhead, but this is not an uncommon situation. The overhead category of a company's financial statements is, by definition, a basket category. Therefore, it is reasonable to assume that not all overhead items will be listed separately. Although some financial statements may serve as an affirmative indication that a given material is treated as a direct material input by the surrogate company, where there is no indication, the converse does not necessarily apply. See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 49537 (August 14, 2000) (Sebacic Acid from the PRC); Notice of Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol from the People's Republic of China, 61 FR 14057, 14063 (March 29, 1996). Moreover, the Department takes the position that it is not required to use perfectly conforming information for factor valuations. See Antidumping Duties; Countervailing Duties; Proposed Rule, 61 FR 7308, 7344 (February 27, 1996). In addition, we note that we are not required to do an item-by-item accounting for factory overhead. See Magnesium Corp., 166 F.3d at 1372.

In this case, Nevinka treats catalysts and auxiliary inputs as overhead items. See Catalysts Memo. We assume that as the surrogate producer is in the same industry as Nevinka respondent, the surrogate producer will treat catalysts in a similar fashion, depreciating them and including them in overhead as Nevinka does. See Rhodia, Inc. v. United States, Slip. Op. 2002-109 (CIT, September 9, 2002) (Rhodia). Moreover, as the surrogate overhead we applied contains an amount for depreciation, we believe it is reasonable to assume that the catalysts are captured by the amount of the surrogate's overhead. See Memorandum from the Team to the File, "Final Factors of Production Valuation Memorandum," dated February 21, 2003. For further discussion of our treatment of catalysts, see Catalysts Memo.

The Department distinguished this case from Ammonium Nitrate from Russia and Ammonium Nitrate from Ukraine in the preliminary determination. Although catalysts are always in use during UANS production, the value of the catalysts in UANS is low, unlike the trace chemicals to which the petitioner refers in Saccharin from the PRC. Moreover, in contrast to the facts of record in Ammonium Nitrate from Russia and Ammonium Nitrate from Ukraine, the respondent in this case reported that it depreciates its catalysts. This suggests that it is appropriate to treat them as an indirect manufacturing

cost and to classify the cost as factory overhead. As stated in the Catalysts Memo, depreciation expenses are typically considered included in overhead expenses.

We find that Silicomanganese from the PRC, which the petitioner cites, supports our position with respect to catalysts, as it upholds the practice of considering relative cost in determining whether certain items should be appropriately attributed to overhead. The electrode paste in Silicomanganese from PRC was not a direct input into the finished product, just as the catalysts are not a direct input into UANS. The cost of electrode paste was high enough that the Department found it necessary to value it apart from overhead, even though the Department acknowledged that such materials are often considered “process costs” attributed to overhead as “consumables.” See Silicomanganese from the PRC and the accompanying Decision Memorandum at Comment IV(1). In contrast to the facts in Silicomanganese from the PRC, the Department finds that the relative cost of the catalysts in UANS does not appear to be so significant that the catalysts must be treated as distinct from overhead. Furthermore, the catalysts differ from the inputs in Bicycles from the PRC; those inputs were significant and there was no risk of double counting if we valued them separately. See, Bicycles from the PRC, 61 FR at 19040. See also Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 67 FR 46173 (July 12, 2002) and the accompanying Decision Memorandum at Comment 6.

Water

We agree with the petitioner that water should be assigned a separate surrogate value in this case. In accordance with section 773(c)(3) of the Act, the Department assigns a surrogate value to inputs such as materials, labor, and energy used in producing a product. In its submissions, Nevinka classified water as an energy source used in producing UANS, rather than as a part of overhead. See Nevinka’s Section C and D questionnaire response at D-29, dated July 1, 2002. At the preliminary determination, the Department understood that Nevinka acquired water at no cost. At verification, the Department verified that Nevinka purchases water and considers it an energy input in the books and records that Nevinka keeps in the ordinary course of business. See Cost Verification Exhibit 3 at page 3. Therefore, in the final determination, we have assigned a separate surrogate value to water.

Water-based Inputs (Steam and Steam Condensate)

Steam

We agree with the petitioner that steam should be assigned a separate surrogate value in this case. However, we have not assigned a separate surrogate value to steam condensate.

In accordance with section 773(c)(3) of the Act, the Department assigns a surrogate value to inputs

such as materials, labor, and energy used in producing a product. In its submissions, Nevinka separates its steam usage into three different types of energy sources: steam that is purchased and used in the production of UANS, steam that is manufactured by Nevinka and used in the production of UANS, and steam that is a by-product of UANS production and is used for purposes other than in the production of UANS. See Nevinka's Section C and D questionnaire response at D-29 and D-34, dated July 1, 2002. The Department verified that Nevinka both purchases and produces steam and considers it an energy input in the books and records that Nevinka keeps in the ordinary course of business. See Cost Verification Exhibit 3 at page 3 and Cost Verification Exhibit 6. The Department has determined that, because Nevinka considers steam as an energy input, rather than as a part of overhead, this provides an indication that steam is likely not included in the overhead category of the financial statements of Egyptian companies in the same industry. Therefore, for the final determination, we have assigned a separate surrogate value to purchased and manufactured steam, and have granted Nevinka its reported credit for its by-product steam.

Steam Condensate

We disagree with Nevinka. In its rebuttal brief, Nevinka argues that "other assisting materials derived from water" (i.e., steam condensate) should be treated as overhead. We disagree with Nevinka's assertion that the Department verified that Nevinka accounts for the balance of steam condensate that is not returned to its steam supplier as a general overhead expense. At verification, we reconciled the "Major Raw Material and Energy Consumption Table," which included all major raw materials and energy inputs, as well as catalysts that were included at the request of the Department in its verification outline. See Cost Verification Exhibit 3. Nevinka included steam condensate and reused condensate under the Water and Thermal Energy portion of the "Major Raw Material and Energy Consumption Table" as an energy input, not as an overhead expense. In Cost Verification Exhibit 6, we reviewed calculation worksheets, technical reports, and various other reports kept in the ordinary course of business; none of these reports indicate that steam condensate is treated as an overhead expense. Furthermore, the energy sections of the calculation worksheets indicates that steam condensate was either directly used as an energy input in the production of UANS or returned to the thermal power plant for a credit for further steam purchases.

Nevinka further argues that steam condensate should be treated as overhead because it does not enter physically into the composition of UANS. Physical incorporation is not an appropriate criterion for analysis with respect to energy inputs. Section 773(c)(3)(C) clearly provides for including energy and other utilities in the surrogate valuation even though these are not physically incorporated in the subject merchandise. In addition, Nevinka appears to argue that the Department "should only value the portion of steam condensate paid for by Nevinka." See Nevinka's Rebuttal Brief at 9. However, Nevinka demonstrated at verification that it does not purchase steam condensate as such, but, instead, purchases steam. See Verification Report at 11.

In its submissions, Nevinka stated that it produces steam condensate as a by-product of UANS

production. Nevinka reported two uses for steam condensate: 1) steam condensate used as an energy source in the UANS production process, and 2) steam condensate returned for its heat content to the thermal power plant for a credit on further purchases of steam. The Department verified that Nevinka produced steam condensate as a by-product of the production process for UANS and used it as an energy source for the production for UANS. See id. Because steam condensate is created as a by-product of the UANS process of production, we can reasonably assume that the costs associated with producing steam condensate are accounted for in the other energy inputs (e.g., steam, water, and electricity), to which we have already assigned surrogate values. Therefore, we are not assigning a separate surrogate value to steam condensate used in the UANS production process for the final determination to avoid double-counting for the final determination.

The Department also verified that Nevinka returned an amount of steam condensate to the thermal power plant for a credit on further purchases of steam. At verification, Nevinka stated that the thermal power plant measured Nevinka's credit by how much heat energy the steam condensate contained. However, Nevinka reported steam condensate in kilograms in its FOP database submitted to the Department. Since we are unable to convert kilograms into a unit that measures energy content, we have not made any offset to account for this credit in the final determination.

Comment 6: Whether the Department Should Calculate its Surrogate Financial Ratios Based Upon One Egyptian Producer

The petitioner states that, in the preliminary determination, the Department calculated its surrogate financial ratios (i.e., overhead, selling, general and administrative expenses (SG&A) and profit) based upon the financial data of three Egyptian fertilizer producers.⁶ For the final determination, the petitioner urges the Department to rely instead upon the financial statements of another Egyptian producer, Abu Qir Fertilizers & Chemical Industries Co. (Abu Qir). The petitioner contends that Abu Qir is a significant Egyptian producer of comparable merchandise and that its financial statements are the only statements that coincide with the Department's investigation period. The petitioner asserts that, in selecting surrogate financial statements, the Department, pursuant to its practice, must rely upon data from producers that most closely represent the respondent's experience, using where possible data from producers of identical or similar merchandise. See Final Determination of Sales at Less Than Fair Value: Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China, 67 FR 36570 (May 24, 2002) and accompanying Decision Memorandum at Comment 5. The petitioner argues that Abu Qir's data meets these requirements because Abu Qir is the largest producer of both

⁶In the preliminary determination, the Department calculated its surrogate financial ratios based upon the financial data of El Delta Fertilizers and Chemical Industries (El Delta), Egyptian Financial Industry Company (EFIC) and Chemical Industries Company (KIMA).

urea and ammonium nitrate⁷ in Egypt and it is the only company for which the Department has data corresponding to the POI. Alternatively, the petitioner argues that, at a minimum, the Department should include Abu Qir's financial data in an average of the overhead calculation for the final results.

However, the petitioner asserts that if, for the final determination, the Department continues to calculate surrogate values based on the same financial statements used in the preliminary determination, the Department should modify its overhead calculations. Specifically, the petitioner argues that the Department should exclude "input services" from El Delta's direct materials and include that item in El Delta's overhead ratio. The petitioner contends that the Department's practice is to treat services not as a direct material, but rather as an element of overhead. In addition, the petitioner contends that the Department should not base EFIC and KIMA's overhead ratio calculation solely on "provisions." The petitioner states that there are no prior instances in which the Department has relied solely upon "provisions" to calculate a company's total overhead expenses. Instead, the petitioner argues, the Department typically includes "provisions" as an element of SG&A, or as one item in the calculation of overhead. See Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China, 62 FR 10530, 10536 (March 7, 1997); see also, Final Determination of Sales at Less Than Fair Value: Ferrovandium and Nitrided Vanadium from the Russian Federation, 62 FR 65656, 65664 (December 15, 1997). Therefore, the petitioner argues that, for the final determination, the Department should modify its financial ratio calculations to include an estimate for depreciation for EFIC and KIMA in the calculation of overhead, in addition to the "provisions" category previously used in the calculation with respect to the financial statements of these two companies.

Nevinka argues that, in the final determination, the Department should calculate surrogate financial ratios based solely upon the financial data of El Delta. Nevinka claims that, in Persulfates from the PRC, the Department expressed a preference for selecting non-market economy surrogate values from producers of identical merchandise, if the surrogate data was considered reliable. See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 69494, 69500 (December 13, 1999). Nevinka states that El Delta is the only producer of identical merchandise on the record of this investigation. Therefore, Nevinka argues that the Department should calculate its surrogate financial ratios in this case solely on the basis of El Delta's data for the final determination.

Department's Position:

For the final determination, we have valued factory overhead, SG&A and profit based upon an average of the financial data of KIMA and El Delta and we have made adjustments to both companies'

⁷The petitioner asserts that urea and ammonium nitrate are comparable to the subject merchandise.

overhead ratios.

In calculating surrogate values for overhead, SG&A and profit, the Department's policy is to use data from market-economy surrogate companies based on the specificity, contemporaneity and quality of the data. See Brake Rotors from the People's Republic of China: Preliminary Results, Preliminary Partial Rescission, and Postponement of Final Results of the Fourth Antidumping Duty Administrative Review, 67 FR 557 (January 4, 2002). In addition, 19 CFR 351.408(c)(4) states that the Department normally will use public information "from producers of identical or comparable merchandise in the surrogate country." In reviewing the four Egyptian companies for which we have the data on the record of this investigation, we examined whether it would be appropriate to use them as surrogate companies for the purposes of deriving factory overhead, SG&A, and profit based on the criteria listed above. In this case, we have the following Egyptian financial statements on the record: 1) the July 2001 - June 2002 and July 2000 - June 2001 financial statements of Abu Qir; 2) the July 2000-June 2001 financial statements of KIMA; 3) the 2001 calendar year financial statement of EFIC; and 4) the July 2000 - June 2001 financial statement of El Delta.

First, we examined the contemporaneity of the four Egyptian companies financial statements. All four Egyptian companies' financial statements are from time periods that either include the POI (specifically, Abu Qir) or cover time periods in 2001 that are within four months of the POI.

Second, we examined the merchandise produced by the four Egyptian companies for merchandise comparability to UANS. As noted in the memorandum on Surrogate Country Values Used for the Preliminary Determination of the Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from the Russian Federation, dated September 26, 2002, we considered UANS, ammonium nitrate and urea, all of which are nitrogen fertilizers, to be merchandise to comparable to UANS. Of the four Egyptian producers, KIMA, El Delta, and Abu Qir's financial statements relate to the production of products that are comparable to the subject merchandise. Specifically, Abu Qir produces urea and ammonium nitrate, El Delta produces ammonium nitrate and has the capacity to produce UANS, and KIMA produces ammonia and ammonium nitrate. While we note that El Delta has the capacity to produce UANS, the data on the record of this investigation does not support Nevinka's claim that El Delta produced UANS during the POI. EFIC produces superphosphates, which is not a nitrogen fertilizer and therefore cannot be considered comparable merchandise. Because EFIC's product is not comparable to subject merchandise, we will not consider its financial data further.

Finally, in selecting surrogate data, we also weighed the quality of the data shown on the financial statements in question with respect to its use as a surrogate for calculating what another company's costs might be in a market environment. See Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (September 27, 2001) and accompanying Decision Memorandum at Comment 1. We note that, although Abu Qir's financial statements are the most contemporaneous, its profit ratio appears to be dramatically higher in

comparison to that of KIMA and El Delta, which, in turn, are fairly similar to each other. As a result of this comparison, we have determined that Abu Qir's financial data is not representative when compared to the financial data of the other Egyptian nitrogen fertilizer producers on the record of this investigation. Therefore, we have determined that averaging the financial data of KIMA and El Delta results in the most reasonable representation of the overhead, SG&A and profit experienced by the UANS and nitrogen fertilizer industry in Egypt.

In addition, we agree with the petitioner that we should adjust El Delta and KIMA's overhead data. As noted by the petitioner, the Department's practice is to treat services as a component of overhead. See Ammonium Nitrate from Russia, 65 FR 42669, and accompanying Decision Memorandum at Comment 2. Therefore, for the final determination, we have excluded input services from direct materials and included this item in El Delta's overhead. Further, for the final determination, we have recalculated KIMA's overhead data to include an estimate for depreciation.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination in this investigation and the final weighted-average dumping margins for Nevinka and the Russia-wide entity in the Federal Register.

Agree_____ Disagree_____

Faryar Shirzad
Assistant Secretary for
Import Administration

Date